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SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION

SAN BERNARDINO COUNTY SHERIFF'S
EMPLOYEES' BENEFIT ASSOCIATION,

Appellant,

vs.

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION,

Respondent.

**DECLARATION OF DEBBY CHERNEY
IN SUPPORT OF RESPONDENT SAN
BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION'S
RESPONSIVE BRIEF IN OPPOSITION
TO APPELLANTS' OPENING BRIEF RE:
PENSIONABILITY OF ANNUAL LEAVE
CASH-OUTS**

DECLARATION OF DEBBY CHERNEY

I, Debby Cherney, declare as follows:

1. I submit this declaration in support of Respondent San Bernardino County Employees' Retirement Association's ("SBCERA") Responsive Brief in Opposition to Appellants' San Bernardino County Sheriff's Employees' Benefit Association's ("Appellant" or "SEBA") Opening Brief Re: Pensionability of Annual Leave Cash-outs. I have personal knowledge of the following facts, and if called and sworn as a witness, could and would testify competently thereto.

2. I currently serve as SBCERA's Chief Executive Officer, a position to which the SBCERA Board of Retirement ("Board") appointed me in August 2018.

3. On August 6, 2020, SBCERA adopted Resolution 2020-5, which resolution directs, effective July 30, 2020, the exclusion from "compensation earnable" of leave cash-outs that exceed what is earned and payable in each 12-month period during a member's final average compensation period, regardless of when that leave cash-out is reported or paid. Attached as **Exhibit A** is a true and correct copy of SBCERA Board Resolution 2020-5 adopted by the Board on August 6, 2020.

4. Attached as **Exhibit B** is a true and correct copy of excerpts of the Memorandum of Understanding ("MOU") for the Safety Unit between the County of San Bernardino ("County") and San Bernardino County Sheriff's Employee's Benefits Association for the years 2019–2024. The relevant portions of the MOU regarding Annual Cash-out Limits are bracketed and highlighted.

5. Attached as **Exhibit C** is a true and correct copy of excerpts of the MOU for the Professional Unit between the County and Service Employees International Union, Local 721 for the years 2020–2024. The relevant portions of the MOU regarding Annual Cash-out Limits are bracketed and highlighted.

6. Attached as **Exhibit D** is a true and correct copy of excerpts of the MOU for the Probation Unit between the County and San Bernardino County Probation Officers Association

Exhibit D: Page 3

1 for the years 2018–2022. The relevant portions of the MOU regarding Annual Cash-out Limits
2 are bracketed and highlighted.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 29 day of April 2022, at San Bernardino,
5 California.


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9 Debby Cherney
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EXHIBIT A

SBCERA RESOLUTION No. 2020-5

**APPROVAL OF EMPLOYER PAY CODES OF EMPLOYEE COMPENSATION
INCLUDED IN COMPENSATION EARNABLE (FOR TIER 1 MEMBERS) AND
PENSIONABLE COMPENSATION (FOR TIER 2 MEMBERS)**

WHEREAS, the San Bernardino County Employees' Retirement Association (SBCERA) Board of Retirement (BOARD) is required by Government Code sections 31461 and 31542, as well as BOARD Benefits Policy No. 26, *Compensation Earnable and Pensionable Compensation*, to determine *compensation earnable* for Tier 1 members.

WHEREAS, on March 7, 2019, the BOARD adopted a Resolution that considered the "AB 197 cases," which had been accepted for review by the California Supreme Court in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.*, Cal. Supreme Court Case No. S247095 (review granted March 28, 2018) ("*Alameda*"), and it affirmed that Resolution on June 4, 2020 (collectively, "AB-197 Clean-Up Resolution").

WHEREAS, as stated in the AB-197 Clean-Up Resolution, SBCERA currently includes in compensation earnable (i) certain types of pay that were considered in *Alameda* (standby, on call, and call back) ("PEPRA Exclusions"), and (ii) other types of pay that AB 197 confirmed could or should be excluded from compensation earnable under *In re Retirement Cases* (2003) 110 Cal.App.4th 426 (employer paid premiums to a third party) ("*Alameda* Exclusions", and collectively with PEPRA Exclusions, "Litigated Compensation Earnable Pay Codes");

Exhibit D: Page 6

WHEREAS, the AB-197 Clean-Up Resolution was based on legal and equitable principles as those principles were addressed by the First District Court of Appeal (“First DCA”) in *Alameda*.

WHEREAS, on July 30, 2020, the California Supreme Court filed its decision in *Alameda*, which, pursuant to Supreme Court Rule 8.532, is expected to be final on August 30, 2020 (the “*Alameda* Decision”). The *Alameda* Decision overturns certain legal and equitable determinations of the First DCA in *Alameda* and concludes that all amendments to the definition of Compensation Earnable in Government Code section 31461, enacted as a result of the Public Employees’ Pension Reform Act of 2013 and related statutory changes to CERL (“PEPRA”), effective January 1, 2013 are constitutional, and that CERL retirement boards may not be contractually bound or estopped by settlement agreements, board resolutions, or other similar actions, from implementing those amendments. The *Alameda* Decision further determines that CERL retirement boards may not include items in compensation earnable that section 31461 requires them to exclude.

WHEREAS, the *Alameda* Decision also held that CERL retirement boards have no discretion to include pay items in Compensation Earnable that are excluded under CERL, PEPRA, or other applicable statutes, disapproving of statements to the contrary in footnote no. 6 of *Guelfi v. Marin County Employees’ Retirement Assn.* (1983) 145 Cal.App.3d 297 (“*Guelfi* footnote 6”).

WHEREAS, the BOARD hereby determines that the *Alameda* Decision and other applicable law require it to change its determinations of pensionability of the Litigated

Compensation Earnable Pay Codes as set forth in the AB-197 Clean-Up Resolution, as resolved below.

WHEREAS, this Resolution is intended to comply with the requirements of the Internal Revenue Code of 1986, as amended or replaced from time to time and the regulations issued thereunder (the “Code”) as applicable.

THEREFORE BE IT RESOLVED, that effective as of August 6, 2020, the following actions are authorized by the BOARD and required of SBCERA:

1) Comply with *Alameda*’s directives regarding mandatorily excluded pay items, which includes the PEPRA Exclusions, and apply that directive to all retiree payroll for individuals who are legacy members who retired on or after January 1, 2013 (including those who will retire on or after the date of this Resolution), effective with the August 31, 2020 retiree payroll.

2) Comply with *Alameda*’s directives regarding the Board’s lack of authority to include the *Alameda* Exclusions in Compensation Earnable, and apply that directive to all retiree payroll for individuals who are legacy members who retired on or after July 30, 2020, when the Supreme Court overturned *Guelfi* footnote 6 and SBCERA was thus on notice of that statement of law (including those who will retire on or after the date of this Resolution), effective with the July 30, 2020 retiree payroll.

3) Recoupment of any overpaid amounts paid to retirees will be determined at a later date in accordance with SBCERA’s Benefit Policy No. 24-Benefit Administration Procedures, applicable federal tax compliance rules, and California law.

Exhibit D: Page 8

Effective with the August 2020 payroll, recalculate and adjust amounts paid to retirees and provide a Notice of Correction Action to each retiree.

4) Present revised pay codes to the Board to ratify exclusions from Compensation Earnable in compliance with the *Alameda* Decision for the PEPRA Exclusions, effective August 30, 2020. Present revised pay codes to the Board to ratify exclusions from Compensation Earnable in compliance with the *Alameda* Decision for the *Alameda* Exclusions, effective July 30, 2020.

5) Communicate to SBCERA participating employers that member contributions are no longer to be taken on pay codes that are excluded as a result of the *Alameda* Decision, effective July 30, 2020 for the *Alameda* Exclusions and effective August 30, 2020 for the PEPRA Exclusions.

6) Refund of active member contributions that were made on pay codes for the PEPRA Exclusions from January 1, 2013-August 29, 2020 will be determined at a later date in accordance with SBCERA's Benefits Policy No. 024 – Benefit Administration Procedures, applicable federal tax compliance rules, and California law. Refund to active members any overpaid member contributions on the PEPRA Exclusions that they make on or after August 30, 2020 as a result of SBCERA's implementation of the *Alameda* Decision.

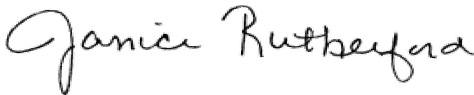
7) Refund active member contributions that were made on pay codes for the *Alameda* Exclusions prior to July 30, 2020 to SBCERA members who did not retire by that date and who therefore will not have the *Alameda* Exclusions included in the calculation of their retirement allowances received from SBCERA.

8) Inform the SBCERA membership of these decisions through appropriate means.

This resolution supersedes any previous resolutions for employer pay codes of employee compensation.

IN WITNESS WHEREOF, the above Resolution for SBCERA is hereby adopted by the BOARD on this 6th day of August 2020.


**SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

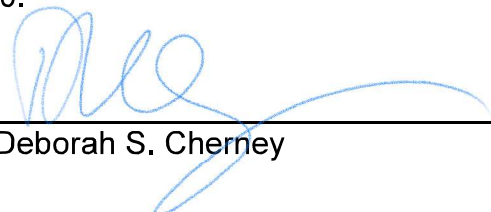
By: 

Janice Rutherford, Chair

* * * * *

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, , Secretary to the BOARD of SBCERA, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the BOARD, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of August 6, 2020.



Deborah S. Cherney

EXHIBIT B

MEMORANDUM OF UNDERSTANDING

SAFETY UNIT

2019 – 2024



**County of San Bernardino
and
San Bernardino County
Sheriff's Employees' Benefit Association**

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After one (1) year on the layoff list, the names of employees shall be transferred to the appropriate open or promotional list. The duration of such placement shall not exceed two (2) years.

Section 2 – Definition of Layoff

Layoff is the involuntary separation or demotion of a regular employee without fault of the employee.

Section 3 – Notification

Whenever the appointing authority anticipates a surplus of employees in regular positions, immediate notification to the Director of Human Resources and SEBA shall be made. The notification shall include the anticipated number and classifications of employees to be laid off and a plan for conducting an orderly layoff to reduce adverse effect on employees to be laid off.

Section 4 – Order of Layoff

Layoffs shall be by classifications unless the appointing authority, with the approval of the Director of Human Resources, deems it for the best interests of the service to make reductions in classification first and thereby cause separation from the service only in the lower ranks. The services of all provisional, temporary, and probationary employees in the classification affected within the interested department shall be terminated in that order before any reduction in the regular force. Layoffs among regular employees shall be made on the basis of seniority determined by the employee's current beginning date of continuous service in a regular position with the County of San Bernardino. A regular employee who accepts demotion in lieu of layoff retains layoff rights to his former classification.

Section 5 – Short-Term Layoffs

Layoffs for periods not to exceed fifteen (15) consecutive work days may be made in any order for reasons approved by the Director of Human Resources.

Section 6 – Exception to Order of Layoff

Whenever the appointing authority believes that the best interests of the service require the retention of employees with special qualifications, characteristics, and fitness for the work, the appointing authority may request an exception to the order of layoff. Such requests must be in writing to the Director of Human Resources and must be supported by the appointing authority's reason. A copy of such request shall be submitted to SEBA at that time.

LEAVE PROVISIONS

Section 1 – Sick Leave

- (a) Definition – Sick leave with pay is an insurance or protection provided by the County to be granted in circumstances of adversity to promote the health of the individual employee. It is not an earned right to time off from work. Sick leave is defined to mean the authorized absence from duty of an employee because of illness, injury, pregnancy, exposure to contagious disease, attendance upon an ill member of the employee's family member, or for a medical, optical, or dental appointment, for certain purposes related to being a victim of domestic violence, sexual assault, or stalking, or other purpose authorized herein. Such authorized absence may include attendance upon the parent(s) of an employee, not to exceed a total of eighty (80) hours per calendar year. In addition, a maximum of forty (40) hours earned sick leave may be used for bereavement due to the death of an employee's family member, or any relative living with the employee.
- (b) Family Member – Family Member is defined by Labor Code section 245.5 as a parent, spouse, registered domestic partner, grandparent, grandchild, or sibling. Child means a biological, foster, or

adopted child, a step child, a legal ward, a child of a domestic partner or a child of a person standing in loco parentis. Parent means a biological, foster, or adoptive parent, a stepparent, legal guardian, or a person who stood in loco parentis when the employee was a minor child. Domestic Partner is defined by California Family Code Section 297.

- (c) Accumulation – Employees in regular positions shall accrue sick leave for each payroll period completed, prorated on the basis of ninety-six (96) hours per year, or 3.69 hours per pay period. Earned sick leave shall be available for use the first day following the payroll period in which it is earned. There shall be no limit on sick leave accumulation. The minimum charge against accumulated sick leave shall be fifteen (15) minutes. Employees in regular positions budgeted less than eighty (80) hours per pay period shall receive sick leave accumulation on a pro-rata basis.
- (d) Compensation – Approved sick leave with pay shall be compensated at the employee's base rate of pay (including POST incentive pay).
- (e) Administration
 - (1) Investigation – It shall be the responsibility and duty of each appointing authority to investigate each request for sick leave and to allow sick leave with pay where the application is determined to be proper and fitting, subject to approval of the Director of Human Resources.
 - (2) Notice of Sickness – The appointing authority or designated representative must be notified at least one (1) hour prior to the start of the employee's scheduled tour of duty of a sickness on the first day of absence. For employees assigned to 24-hour institutions (e.g., correctional facilities) the appointing authority or designee should be notified at least two (2) hours prior to the start of the employee's scheduled tour of duty of a sickness on the first day of absence and must be notified at least one (1) hour prior to the start of the employee's scheduled tour of duty. It is the responsibility of the employee to keep the appointing authority informed as to continued absence beyond the first day for reasons due to sickness. Failure to make such notification may result in denial of sick leave with pay.
 - (3) Review – The Director of Human Resources may review and determine the justification of any request for sick leave with pay and may, in the interest of the County, require a medical report by a doctor to support a claim for sick leave pay.
 - (4) Proof – A doctor's certificate or other adequate proof of illness shall be provided by the employee in all cases of absence due to illness when requested by the appointing authority. Requests for proof of illness will be made in compliance with the California Labor Code.
 - (5) Improper Use – Evidence substantiating the use of sick leave for trivial indispositions, instances of misrepresentation, or violation of the rules defined herein shall be construed as grounds for dismissal or such other action as may be deemed proper and necessary by the appointing authority and/or the Board of Supervisors.
 - (6) Misconduct – Sick leave with pay may be denied if the absence is found to be due to willful injury, gross negligence, intemperance, improper conduct or willful absence without leave on the part of the employee.
- (f) Workers' Compensation – As provided in Section 4850 of the Labor Code, a Safety Unit employee who is injured in the line of duty is entitled to full salary in lieu of Workers' Compensation benefits and sick leave for a period not to exceed one (1) year. After the employee has used one (1) full year of such 4850 time, said employee may use accumulated sick leave with pay with the approval of the appointing authority to augment temporary disability payments if said employee is still temporarily disabled by order of an accepted physician under the Workers' Compensation sections or until said employee is retired.

- (g) Separation – Unused sick leave shall not be payable upon separation of the employee, except as provided in the Retirement Medical Trust Article.

Section 2 – Annual Leave

- (a) Definition – Annual leave is granted in lieu of any other vacation or holiday leave provisions. Annual leave is a right, earned as a condition of employment, to a leave of absence with pay for the recreation and well-being of the employee. Under unusual circumstances, annual leave may be used for sick leave purposes upon a special request of the employee and with the approval of the appointing authority.

- (b) Accumulation

All employees in regular positions shall accrue, on a pro-rata basis, annual leave time for completed service hours, up to eighty (80) hours per pay period. Such annual leave time shall be available for use on the first day following the pay period in which it is earned, provided an employee has completed 1,040 hours of continuous service from the employee's date of hire in a regular bargaining unit position. Employees in regular positions budgeted less than eighty (80) hours per pay period shall receive annual leave accumulation on a pro-rata basis.

Length of Service from Hire Date	Annual Leave Allowance	Maximum Allowed Unused Balance
After 1,040 and through 8,320 service hours	176 hours	336 hours
Over 8,320 service hours and Through 18,720 service hours	216 hours	416 hours
Over 18,720 service hours	256 hours	550 hours

- (c) Court Holidays

- (1) Employees assigned to the Court Service Bureau of the Sheriff's Department shall use annual leave for the following court holidays:

New Year's Day	Thanksgiving
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

When a court holiday falls on a Sunday, the next day, Monday, shall be observed as the holiday.

- (2) Whenever an employee is required to work on a fixed holiday, the time will be coded as work time and not charged against the employee's annual leave bank.
- (3) If an employee does not have sufficient annual leave for the holiday, the employee will use compensatory time off. If the employee has no compensatory time off, the employee will use approved absence without pay. An employee who has been employed less than 1,040 hours and/or did not have the opportunity to accrue sufficient annual leave time will be given the option of working another assignment designated by the appointing authority, using compensatory time off, or taking approved leave without pay. An employee can work the holiday upon request of the employee only if work is available and upon approval by the appointing authority.
- (4) Other court holidays shall be considered regular work days.

- (d) County Fixed Holidays in the Office of the District Attorney

Any newly hired District Attorney Investigator shall be credited with 40 hours of leave to use on County Fixed Holidays during the first 1,040 hours of employment. Such hours will be offset against the amount of Annual Leave granted to the employee after the completion of the 1,040 service hours.

EXAMPLE: A DA investigator is hired February 1 and credited with 40 hours of leave. The employee codes 8 hours for each of the 3 County Fixed Holidays that fall within the period from hire date to 1,040 hours of continuous service. At 1,040 continuous service hours, the employee will be credited with 64 hours of Annual Leave computed as follows: 88 hours Annual Leave minus the 24 hours of leave previously coded on the County Fixed Holidays, leaving the employee with a balance of 64 hours Annual Leave.

(e) Administration

- (1) Annual leave shall be taken annually at the discretion of the appointing authority, and at such times as will not impair the work schedule or efficiency of the department. The parties recognize that it is the responsibility of the employee to keep track of their own leave balances and to endeavor to keep the leave balance within the maximum allowable unused balance. Every effort will be made to enable employees to take time off to remain below the maximum balance; however, to facilitate scheduling the employee should provide at least six (6) pay periods advance notice of reaching the maximum balance to the appointing authority or designee. No employee, however, shall lose earned annual leave time because of work urgency or during leave of absence under Section 4850 of the Labor Code. If an employee has reached the maximum allowed unused balance due to work urgency or leave of absence under Section 4850 of the Labor Code and is unable to take an annual leave, the appointing authority will notify the Auditor-Controller/Treasurer/Tax-Collector of the situation and approve one (1) waiver per calendar year of the maximum allowed unused balance for a period not to exceed thirteen (13) pay periods, or in the case of a 4850 leave, not to exceed thirteen (13) pay periods from date the employee returns to duty.
- (2) The minimum charge against accumulated annual leave shall be fifteen (15) minutes or multiples thereof. Annual leave shall be compensated at the employee's base rate of pay, including POST incentive pay.
- (3) Employees not planning to return to County employment at the expiration of an annual leave, except those retiring, shall be compensated at their base rate of pay (including POST incentive pay) in a lump sum payment for accrued annual leave and shall not be carried on the payroll. Retiring employees may elect to use annual leave to enhance retirement benefits or be compensated in a lump sum payment for accrued time, provided that each pay period the employee charges the number of hours in their regular scheduled tour of duty. Terminating employees not covered by the above provisions shall be compensated at their base rate of pay (including POST incentive pay) for accrued annual leave that they were entitled to use as of the date of termination.
- [(4) On one (1) occasion during each calendar year, an employee who has utilized eighty (80) or more hours of annual leave during the previous calendar year may elect to convert into a cash payment, at the rate of pay (including Incentive Pay) then in effect, up to forty (40) hours of accrued annual leave.
- [In order to sell back annual leave prior to termination or retirement, an employee must make an irrevocable election (i.e., pre-designation) during the month of December, specifying the number of hours to be sold back from the next calendar year's annual leave time accrual. Such election must be made in a single block of not more than forty (40) hours. During the calendar year following the pre-designation, no more than three (3) requests may be made to cash out the annual leave in a single block of not less than eight (8) hours and no more than forty (40) hours. An employee shall be eligible to cash-out annual leave hours accrued up to the preceding period in which he/she requested the cash-out. For example, an employee who requests a cash-out in pay period 15 can only cash-out annual leave accrued through pay period 14. The number of hours requested for cash-out shall not exceed an amount equal to or less than the amount accrued. For example, an

employee in December 2017 makes a pre-designation to cash-out 25 hours. The employee accrues 4.61 hours of annual leave per pay period. At the end of pay period 2 the employee can request to cash-out the 8 hours of annual leave that she had accrued, but is not yet eligible to cash-out the entire 25 pre-designated hours because the employee has yet to accrue 25 hours of annual leave. Once an election is made, the employee must request that the designated number of hours actually be sold back by pay period 25 of the calendar year in which the election is effective, or the hours will be automatically converted into cash in pay period 26.]

- (5) **Prior Service** – Effective August 3, 2019, employees newly hired into regular positions who have been employed in a public jurisdiction in a comparable position immediately prior to hire into this Unit may receive credit for up to four (4) years (full time equivalent) previous experience into the former agency(s) in determining their Annual Leave accrual rate. Such determination as to the comparability of previous experience and amount of credit to be granted rests solely with the Director of Human Resources. Such requests must be made at the time of hire or as soon as possible thereafter, but in no event later than one (1) year from the employee's hire date.
- (h) **Grandfather Bank** – Employees who have accrued annual leave (previously vacation and holiday leave) in excess of that allowed under this Article as of July 14, 1979, shall be allowed to maintain their total balance as of June 2, 1979, provided, however, that any payment of such total balance at the time of retirement or separation shall be based on the base rate of pay in effect immediately preceding June 2, 1979. The employee shall have the option to select whether any use of annual leave shall be charged against time accrued prior to June 2, 1979, or time accrued subsequent to June 2, 1979.

Section 3 – Compulsory Leave

If in the opinion of the appointing authority an employee could be incapacitated for work for physical or psychological reasons, an examination may be required by a physician or other competent authority designated or approved by the Director of Human Resources. If the examination report shows the employee to be in an unfit condition to perform the duties required of the position, the appointing authority shall have the right to compel such employee to take sufficient leave of absence with or without pay, or to transfer to another position without reduction in compensation and to follow a prescribed treatment regimen until medically qualified to return to unrestricted duty.

If an employee temporarily does not possess a job prerequisite, until such time as the deficiency disappears, the appointing authority shall compel the employee either (1) to take a leave of absence with or without pay or (2) to transfer to another position without a reduction in pay; provided that nothing herein shall inhibit the ability of the appointing authority to impose appropriate discipline.

Section 4 – Military Leave

As provided in the California Military and Veterans Code Section 395 et seq., and any amendment thereto, and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, a County employee, regular, extra-help, or recurrent may be entitled to the following rights concerning military leave:

- (a) **Definition** – Military leave is defined as the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training (weekend drills), full-time National Guard duty, and a period for which an employee is absent for the purpose of an examination to determine the fitness of the person to perform any such duty.
- (b) **Notice and Orders** – All employees shall provide advance notice of military service unless military necessity prevents the giving of notice or the giving of notice is impossible or unreasonable. Where available, copy of military orders must accompany the request for leave.
- (c) **Temporary Active Duty** – Any employee who is a member of the reserve corps of the Armed Forces, National Guard, or Naval Militia shall be entitled to temporary military leave of absence for the

purpose of active military training, encampment, naval cruises, special exercises or like activities provided that the period of ordered duty does not exceed one hundred eighty (180) calendar days, including time involved in going to and returning from such duty. While on paid status, an employee on temporary military leave shall receive the same annual, sick leave, step advances and benefits that would have been enjoyed had the employee not been absent, providing such employee has been employed by the County for at least one (1) year immediately prior to the date such leave begins. In determining the one (1) year employment requirement, all time spent in recognized military service, active or temporary, shall be counted. An exception to the above is that an uncompleted probationary period must be completed upon return to the job. Any employee meeting the above one (1) year employment requirement shall be entitled to receive their regular salary or compensation, pursuant to Section (e) of this Article.

- (d) Full-Time Active Duty – Employees who resign from their positions to serve in the Armed Forces for more than one hundred eighty (180) days, shall have a right to return to their former classification upon serving written notice to the appointing authority, no later than ninety (90) days after completion of such service. Returning employees are subject to a physical/psychological examination.

Should such employee's former classification have been abolished, then the employee shall be entitled to a classification of comparable functions, duties, and compensation if such classification exists, or to a comparable vacant position for which the employee is qualified.

The right to return to former classification shall include the right to be restored to such civil service status as the employee would have if the employee had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive such employee of this right to restoration.

Eligible employees are also entitled to the reemployment and benefit rights as further described in the Uniformed Services and Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301-4333. Specifically, a returning employee will receive restoration of original hire date, salary step, annual accrual rate, sick leave balance (unless the employee has received payment for unused sick leave in accordance with provisions contained herein), the retirement plan contribution rate and retirement system contributions (provided the employee complies with any requirements established by the Retirement Board). However, such employee will not have accrued annual, sick leave, or other benefit while absent from County employment, except as provided in the temporary duty provision.

- (e) Compensation – This provision does not include an employee's attendance for inactive duty, commonly referred to as weekend reserve meetings, muster duty or drills. Employees must use their own time to attend such meetings. Should the meetings unavoidably conflict with an employee's regular working hours, the employee is required to use annual leave, leave without pay, or make up the time. Employees who are called in for a medical examination to determine physical fitness for military duty must also use annual leave, leave without pay, or make up the time. Employees cannot be required to use their accrued leave. Any employee meeting the requirements in (c) shall be entitled to receive their regular salary or compensation for the first thirty (30) calendar days of any such leave. Pay for such purposes shall not exceed thirty (30) days in any one fiscal year and shall be paid only for the employee's regularly scheduled workdays that fall within the thirty (30) calendar days.
- (f) Extension of Benefits – The County recognizes the increased requirements of the military due to the current threats facing the United States of America and, as such, has established a program under which employees may be eligible for an extension of benefits. Employees who are called to active duty as a result of the activation of military reservists beginning in September 2001, and who are eligible to receive the thirty (30) calendar day military leave compensation, and meet the requirements established by the Board, shall receive the difference between their base County salary and their military salary starting on the 31st calendar day of military leave. The difference in salary shall continue for the period approved by the Board of Supervisors. During this period, the County will continue to provide the employee the benefits and all leave accruals as was provided prior to such

active duty. Retirement contributions and credit will be granted if the employee had enough pay to cover the entire contribution. If the employee does not get enough pay to cover the retirement contribution, no contribution or credit will be given. Employees should note that the Accidental Death and Dismemberment (AD&D) plan contains a war exclusion.

If the employee becomes eligible for full County payment for the first thirty (30) days of military leave provided in (c) of this Article, the extended payments provided under this Section shall be suspended and shall be continued after the thirty (30) days compensation has been completed.

No compensation shall be paid beyond the thirty (30) day leave period, unless such compensation is expressly approved by the Board of Supervisors.

(g) Annual and Military Leave – Employees shall not be permitted to take annual or other accrued leave in lieu of the military leave provisions provided in Section (c) of the Article. Employees may elect to use accrued leave time, except sick leave, in lieu of the integrated pay in Section (f) of this Article under the following conditions:

- (1) The employee must decline in writing the benefits of Section (f) of this Article prior to the due date of the Time and Labor Report (TLR). The employee must include the dates for which he/she is declining the benefit.
- (2) The employee must use accrued leave time for the entire pay period (i.e., County pay will not be integrated with military pay for partial pay periods).
- (3) Such written declination cannot be revoked or amended at a later date for a pay period for which the TLR has already been submitted.
- (4) Benefits, leave accruals, and pay will be administered per normal procedures for annual leave pay; no additional benefits otherwise granted under this Article will be available.

Employees may elect to use accrued leave time, except sick leave, once all paid benefits have been exhausted.

Section 5 – Political Leave

Any employee who is a candidate for public office (i.e., a candidate who has filed the appropriate documents) shall have the right to a leave of absence without pay for a reasonable period to campaign for the election. Such leave is subject to the conditions governing Special Leaves of Absence Without Pay contained herein.

Section 6 – Special Leaves of Absence Without Pay

A special leave without pay for a period not exceeding one (1) year, unless extended, may be granted to an employee who :

- (a) Is medically incapacitated to perform the duties of the position.
- (b) Desires to engage in a relevant course of study which will enhance the employee's value to the County.
- (c) Takes a leave pursuant to the federal Family Medical Leave Act of 1993, the California Family Rights Act, and/or Pregnancy Disability Leave provisions under the Fair Employment and Housing Act (FEHA).
- (d) Is approved for any reason considered appropriate by the appointing authority and the Director of Human Resources.

Such request must be in writing and requires the approval of the appointing authority and the Director of Human Resources. The employee is responsible for providing appropriate documentation to justify the reasons for the special leave of absence (e.g. medical documentation from a qualified health practitioner) prior to approval. Upon request, the appointing authority and the Director of Human Resources may grant successive leaves of absence (e.g. employees who meet the eligibility requirements for a disability retirement) with appropriate documentation.

Leaves of absence without pay may be given to an employee with or without right to return to classification. At the expiration of leaves without right to return, the employees must contact the Director of Human Resources to have their names referred for a sixty (60) calendar day period to all job openings in their classification for reemployment without examination, such time to run concurrently with the one hundred and eighty (180) calendar day period provided in the Reemployment Article herein. The employee must be appointed to a position within this sixty (60) day period or be terminated. At the expiration of leaves with right to return, the employee will have the right to return to a vacant position within the department in their current classification.

An employee who is pregnant has the right to continue performing the regular duties of her position until a medical authority determines that she is unable to perform those duties. At that time, if requested by the employee, the appointing authority will make every effort to find other duties the employee can perform until she is disabled due to her pregnancy or childbirth.

A pregnant employee who is medically able to perform the duties of her position but who prefers to be reassigned to available duties that are less strenuous and/or less dangerous, may request a reassignment under the conditions listed above. If the appointing authority is unable to find other suitable duties, and the employee prefers a leave of absence to continuing to perform her regular duties, a leave of absence with right to return will be granted.

Section 7 – Relocation Leave

Employees in regular positions who are required by an appointing authority to change their principal place of residence because of a reassignment to meet the needs of the service shall be granted time off with pay at their base rate of pay not to exceed sixteen (16) work hours.

Section 8 – Jury Duty Leave

Employees in regular positions who are summoned to jury duty shall be entitled to base pay for those hours of absence from work, provided the employee deposits fees for service, other than mileage, with the County Treasurer. Such employees will further be required to deliver a "Jury Duty Certification" form at the end of the required jury duty to verify such service. Employees called for Grand Jury duty shall be granted a leave of absence without pay to perform the duties of a member of the Grand Jury.

Section 9 – Examination Time

Employees in regular positions shall be entitled to a reasonable amount of leave with pay for the purpose of applying for and taking County promotional examinations (e.g., selection interviews). Employees are responsible for notifying and obtaining approval from their immediate supervisor prior to taking such leave. Examination time shall not be charged against any accumulated leave balances and shall be compensated at the employee's base hourly rate. An employee is not entitled to compensation for any examination process that occurs outside their scheduled work shift or on a day that the employee is not scheduled to work. Further, an employee is not entitled to compensation for any examination process when promoting outside of a SEBA-represented bargaining unit that can ordinarily be completed outside their scheduled work shift or on his/her own non-working time (e.g., online exams), or on a day that the employee is not scheduled to work.

EXHIBIT C

MEMORANDUM OF UNDERSTANDING

2020 – 2024

PROFESSIONAL UNIT



COUNTY OF SAN BERNARDINO

AND

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 721

MEMORANDUM OF UNDERSTANDING
2020-2024

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Section 7 - Reemployment from Layoff

A regular employee who has been laid off from County employment and is subsequently rehired to a regular position shall be reemployed in the same manner as described in the Reemployment Article in this Agreement.

LEAVE PROVISIONS

Unless otherwise provided in this Leave Provisions article, employees shall not be eligible to code paid leave during hours the employee is not scheduled to work (e.g., it is the employee's normal day off, the employee is off work pursuant to an FMLA, CFRA, or workers' compensation leave, the employee is not in a paid status for the pay period, etc.).

Section 1 – Sick Leave

(a) Definitions

- (1) Sick Leave – Sick leave with pay is an insurance or protection provided by the County to be granted in circumstances of adversity to promote the health of the individual employee. It is not an earned right to time off from work. Sick leave is defined to mean the authorized absence from duty of an employee because of physical or mental illness, injury, pregnancy, confirmed exposure to a serious contagious disease, for a medical, optical, or dental appointment, for certain purposes related to being a victim of domestic violence, sexual assault, or stalking, or other purpose authorized herein.
- (2) Family Member – Family Member is defined by Labor Code section 245.5 as a parent, child, or spouse, registered domestic partner, grandparent, grandchild, or sibling. Child means a biological, foster, or adopted child, a step child, a legal ward, a child of a domestic partner or a child of a person standing in loco parentis. Parent means a biological, foster, or adoptive parent, a stepparent, legal guardian, or a person who stood in loco parentis when the employee was a minor child. Domestic Partner is defined by Family Code section 297.
- (3) Extended Family – Extended family is defined as a parent/sibling-in-law, aunt, uncle, niece, nephew, or any step relations as defined herein.

- (b) Accumulation – Employees in regular positions shall accrue sick leave for each payroll period completed, prorated on the basis of eighty-eight (88) hours per year, or 3.39 hours per pay period, except as provided in Section 5 of this Article. Earned sick leave shall be available for use the first day following the payroll period in which it is earned. Employees in regular positions paid less than eighty (80) hours per pay period or job-shared positions shall receive sick leave accumulation on a pro-rata basis. There shall be no limit on sick leave accumulation.

- (c) Compensation – Approved sick leave with pay shall be compensated at the employee's base rate of pay, except as otherwise provided in this Agreement. The minimum charge against accumulated sick leave shall be fifteen (15) minutes.

(d) Administration

- (1) Investigation – It shall be the responsibility and duty of each appointing authority to investigate each request for sick leave and to allow sick leave with pay where the application is determined to be proper and fitting, subject to approval of the Director of Human Resources.
- (2) Notice of Sickness – In twenty-four (24) hour departments and for employees whose work assignment requires leaving their assigned work site together with one or more other employees shortly after

reporting to work (e.g., clinic staff), the appointing authority or designee should be notified at least two (2) hours prior to the start of the employee's scheduled shift of a sickness on the first day of absence. In other departments, the appointing authority or designee must be notified within one-half (1/2) hour after the start of the employee's scheduled shift of a sickness on the first day of absence.

It is the responsibility of the employee to keep the appointing authority informed as to continued absence beyond the first day for reasons due to sickness or occupational disability. Failure to make such notification shall result in denial of sick leave with pay. If the employee receives a doctor's off-work order and provides notice of same to the appointing authority, the employee is not required to contact the department daily. If the employee does not have an off-work order or has not notified the appointing authority that one has been issued, the employee shall be required to contact the department daily in accordance with the applicable timeframe above.

- (3) Review/Proof – The Department may review and determine the justification for any request for sick leave with pay and may, at any time, in the interest of the County, require a medical report or other adequate proof from a doctor to support a claim for sick leave pay if misuse of sick leave is suspected. Generally, requests for proof of illness will be made only after the second consecutive absence and in compliance with the California Labor Code.
- (4) Improper Use – Evidence substantiating the use of sick leave for willful injury, gross negligence, intemperance, trivial indispositions, instances of misrepresentation, or violation of the rules defined herein will result in denial of sick leave with pay and shall be construed as grounds for disciplinary action including termination.

(e) Sick Leave for Other than Personal Illness/Injury

- (1) Family Sick Leave – A maximum of one-half (1/2) of the employee's annual accrual of earned sick leave per calendar year may be used for attendance upon family members of the employee who require the attention of the employee.

Upon approval of the appointing authority, the employee may use part of this annual allowance for attendance upon members of the employee's extended family residing in the employee's household who require the attention of the employee.

- (2) Bereavement – A maximum of three (3) days earned sick leave may be used per occurrence for bereavement due to the death of a family member or a member of the employee's extended family, as defined in Section 1(a) of this Article, or any relative who resided with the employee.
- (3) Birth/Adoption – A maximum of forty (40) hours earned sick leave may be used per occurrence for arrival of an adoptive child at the employee's home. An employee may utilize on an annual basis no more than forty (40) hours of accumulated sick leave per calendar year for the birth of his/her child.
- (4) Medical, Optical or Dental Appointments – The employee may use sick leave for medical, dental or optical appointments; however, every effort should be made to schedule the appointments at a time of day that will minimize the employee's time off work.

(f) Return-to-Work Medical Clearance

- (1) Under any of the following circumstances, all employees who have been off work due to an illness or injury will report to the San Bernardino County Center for Employee Health and Wellness for a medical evaluation of their condition and authorization to return to work before returning to work.
 - (i) Employees whose treating physician or other qualified medical provider has ordered job modification(s) as a condition for either continuing to work or for returning to work after an illness or injury. This applies to both occupational and non-occupational illness or injury.

- (ii) Employees who have been off work due to communicable diseases such as, but not limited to, chicken pox and measles.
 - (iii) Employees who have been absent on account of a serious medical condition, when so directed by their appointing authority.
 - (2) Employees are required to attend return-to-work medical appointments at the Center for Employee Health and Wellness on their own time; however, mileage for attending such appointments are eligible for reimbursement pursuant to the Expense Reimbursement Article.
 - (3) It is the responsibility of the employees covered by (1) (i) - (iii) above to obtain written notice from their medical provider of their authorization to return to work with or without job modification. To ensure all necessary and relevant medical information is provided, the County shall make available forms to be completed by the medical provider. It is the responsibility of employees to provide verbal notice to their appointing authority immediately upon receipt of their medical provider's authorization to return to work, and no later than 24 hours after receipt of the notice. The appointing authority or designee will schedule an appropriate medical evaluation for the employee with the Center for Employee Health and Wellness prior to the employee's return to work. Employees shall provide their medical provider's written notice of authorization to return to work to the Center for Employee Health and Wellness at or prior to the employee's scheduled appointment time.
 - (4) Exceptions to the above requirements may be made on a case-by-case basis by the Medical Director or designee for the Center for Employee Health and Wellness.
 - (5) The employee is obligated to attend the appointment as scheduled under the conditions outlined above. If the employee fails to adhere to the procedure, the employee is required to use sick leave or leave without pay for any work hours missed. If required notice has been provided and there is a delay between the employee's appointment with the Center for Employee Health and Wellness and the start of his/her scheduled shift on the day that he/she was released to return to work, the County will pay for work hours missed, without charge to the employee's leave balances.
 - (6) The final decision on the employee's ability to return to work rests with the medical provider at the Center for Employee Health and Wellness. In the event the employee is not released to return to work by the medical provider at the Center for Employee Health and Wellness, the employee's status would continue on sick leave or, where there is no balance, leave without pay.
- (g) Workers' Compensation
- (1) "40-Time". Employees shall receive full salary in lieu of Workers' Compensation benefits and paid sick leave for up to forty (40) hours following an occupational injury or illness, if authorized off work by order of an accepted physician under the Workers' Compensation sections of the California Labor Code. The forty (40) hours (often referred to as "40-Time") shall be eligible to be used to cover the three (3) day waiting period as provided by Labor Code 4652 and any subsequent follow-up appointments (e.g., doctor's appointments to remove a cast, physical therapy, etc.) related to that specific approved claim.
 - (2) Leave Integration. Employees may choose to use accumulated paid leave (e.g., vacation leave, sick leave, PTO, etc.) on a prorated basis to supplement such temporary disability compensation payments, provided that the total amount shall not exceed the regular gross salary of the employee.
- (h) Separation – Unused sick leave shall not be payable upon separation of the employee, except as provided in the Retirement Medical Trust Fund Article.
- (i) Perfect Attendance – Regular employees, regularly scheduled at least seventy-two (72) hours per pay period, who do not utilize any sick leave, any leave (e.g., vacation) in lieu of sick leave, or benefits in lieu

of sick leave (e.g., workers' compensation, Short-Term disability partial/full integration, etc.) in pay periods 1 through 26 consecutively (or 27, when applicable), and who do not record any sick leave without pay, Medical Emergency Leave, Military Leave unless required by law, or absent without pay during that calendar year, shall be eligible for Perfect Attendance. Employees who qualify for Perfect attendance shall be reimbursed up to a maximum of \$299 for an annual individual (employee only) health club membership or utilization of perfect attendance leave. In lieu of the reimbursement, the employee has the option of utilizing sixteen (16) hours of perfect attendance leave, no cash out provision, from the period of time the perfect attendance leave is granted until the end of the calendar year it was granted. Perfect Attendance benefits shall be prorated for employees scheduled less than eighty (80) hours per pay period. For example, an employee who is regularly scheduled 72 hours per pay period would be eligible for a \$269 health club reimbursement or 14.4 hours of perfect attendance leave. Failure to utilize perfect attendance leave by pay period 26 (or 27 when applicable) of the year in which it was credited to the employee's leave balances or if the employee is appointed to a position in an occupational unit that does not contain a perfect attendance leave provision shall result in forfeiture of the same.

- (j) Sick Leave Conversion Option— Employees who have used less than forty (40) hours of sick leave in a fiscal year (i.e., pay period 15 through pay period 14 of the following year) may, at the employee's option, convert sick leave to vacation leave by the following formula: Hours of sick leave used are subtracted from forty (40). Sixty percent (60%) of the remainder, or a portion thereof, may be added to vacation leave to be utilized in the same manner as other accrued vacation leave.

<u>Sick Leave Hours Used</u>	<u>Hours to be Converted</u>	<u>Vacation</u>
0	40	24.0
8	32	19.2
16	24	14.4
24	16	9.6
32	8	4.8
40	0	0.0

Section 2 – Bereavement Leave

Employees in regular positions may use up to two (2) days paid bereavement leave, not charged to the employee's accrued paid leave balances, per occurrence for bereavement due to the death of a family member of the employee's, or domestic partner as defined by California Family Code Section 297. For the purposes of this Section 2, family member is defined in Section 1(a) of this Article.

One (1) additional day shall be granted if the employee travels over one thousand (1,000) miles from his/her residence to the bereavement service(s). This additional day shall not be charged to the employee's personal leave balances.

Section 3 – Vacation Leave

- (a) Definition— Vacation is a right, earned as a condition of employment, to a leave of absence with pay for the recreation and well-being of the employee. If an employee has exhausted sick leave, vacation leave may be used for sick leave purposes upon a special request of the employee and with the approval of the appointing authority.
- (b) Accumulation— Employees in regular positions shall accrue, on a pro-rata basis, vacation leave for each pay period. Except as provided in Section 5 of this Article, employees in regular positions paid less than eighty (80) hours per pay period or job-shared positions shall receive vacation leave accumulation on a pro-rata basis; provided, however, that there shall be no prorating of the maximum accumulations.

Such vacation allowance shall be available for use on the first day following the pay period in which it is earned, provided an employee has completed 1,600 hours of continuous service from the employee's hire date.

Length of Service From Hire Date	Annual Vacation Allowance	Maximum Allowed Unused Balance
From Hire Date through 8,320 service hours	80 hours	160 hours
Over 8,320 and through 18,720 service hours	120 hours	240 hours
Over 18,720 service hours	160 hours	320 hours

(c) Administration

- (1) Scheduling – Vacation periods should be taken annually with the approval of the appointing authority at such time as will not impair the work schedule or efficiency of the department but with consideration given to the well-being of the employee. No employee shall lose earned vacation leave time because of work urgency. If an employee has reached the maximum allowed unused balance and is unable to take vacation leave because of work urgency, the appointing authority will notify the Auditor-Controller/Treasurer/Tax Collector's office of the situation and approve a waiver of the maximum allowed unused balance for a period not to exceed one (1) thirteen (13) pay period waiver per calendar year.

Written request for vacation leave shall receive a written response from the appointing authority within two (2) weeks of submission. In instances where a vacation leave request has received written, advance approval and is rescinded due to work urgency by the supervisor, that decision may be appealed to the Department Head for an immediate review. In those instances where the direct supervisor is the Department Head the rescission due to work urgency may be appealed to the Director of Human Resources for immediate review. In those instances where a financial hardship would occur because pre-approval resulted in prepayment by the employee, a vacation would only be canceled under the most extreme work emergency.

- (2) Minimum Charge – The minimum charge against accumulated vacation leave shall be fifteen (15) minutes. Vacation leave shall be compensated at the employee's base rate of pay, except as otherwise provided in this Memorandum of Understanding.
- (3) Holiday During Vacation – When a fixed holiday falls within a vacation period, the holiday time shall not be charged against an employee's earned vacation benefits.
- (4) Vacation Leave and Termination Date – Employees not planning to return to County employment at the expiration of a vacation leave, except those retiring, shall be compensated in a lump sum payment for accrued vacation at the employee's then base rate of pay and shall not be carried on the payroll. Retiring employees may elect to use vacation leave or be compensated in a lump sum payment for accrued vacation leave, provided that each pay period the employee charges the number of his/her regularly scheduled hours.

- (5) Vacation Cash-Out – On one occasion each calendar year until the expiration of this contract, an employee who had used eighty (80) or more hours of vacation leave during the preceding calendar year may elect to convert up to sixty (60) hours of accrued vacation leave into a cash payment, at the base rate of pay in effect at the time of the cash-out. In order to sell back vacation leave, an employee must make an irrevocable election (i.e., pre-designation) during the month of December (beginning in December of 2016), specifying the number of hours to be sold back from the next

[year's vacation leave accrual. During the calendar year following the pre-designation, no more than three (3) requests may be made to cash out the vacation leave in a single block of not less than eight (8) hours and no more than sixty (60) hours. An employee shall be eligible to cash-out vacation leave hours accrued up to the preceding pay period in which he/she requested the cash-out. For example, an employee who requests a cash-out in pay period 15 can only cash-out the vacation leave accrued through pay period 14. The number of hours requested for cash-out shall not exceed an amount equal to or less than the amount accrued. For example, an employee in December 2016 makes a pre-designation to cash-out 25 hours. The employee accrues 4.61 hours of vacation leave per pay period. At the end of pay period 2 the employee can request to cash-out the 8 hours of vacation leave that she had accrued, but is not yet eligible to cash-out the entire 25 pre-designated hours because the employee has yet to accrue 25 hours of vacation leave. Once an election is made, if the employee does not request that the designated number of hours be sold back by pay period 25 of the calendar year in which the election is effective, the hours will be automatically converted to cash in pay period 26. The vacation leave cash-out shall sunset upon the expiration of the agreement.]

- (d) Prior Service – New employees hired into the County in regular positions who have been employed in a public jurisdiction or in a private hospital in a comparable position may receive credit for up to four (4) years (full time equivalent) previous experience in the former agency(s) in determining their vacation accrual rate. Private hospital experience shall only be considered for positions assigned to the Arrowhead Regional Medical Center. Such determination as to the comparability of previous experience and amount of credit to be granted rests solely with the Director of Human Resources. Requests for prior service credit should be made at the time of hire or as soon as possible thereafter but in no event later than one (1) year from the employee's hire date.

Section 4 – Holiday Leave

- (a) Fixed Holidays – All employees in regular positions shall be entitled to the following holidays:

January 1st	November 11th
Third Monday in January	Thanksgiving Day
Third Monday in February	Day after Thanksgiving
Last Monday in May	December 24th
July 4th	December 25th
First Monday in September	December 31st
Second Monday in October	

- (b) Floating Holidays – Employees in regular positions shall be entitled to accrue one floating holiday (eight (8) hours holiday time) during the first pay period prior to the third Monday in January, provided that the employee is not on unpaid leave for the entire pay period and is in a paid status on the payroll.

Floating holidays accrued shall be available for use on the first day following the pay period in which they are accrued, with the approval of the appointing authority. Appointing authorities have the right to schedule employees' time off for accrued holidays to meet the needs of the service but with consideration given to the well-being of the employee. Employees in regular positions budgeted less than eighty (80) hours per pay period or job-shared positions shall receive floating holiday accruals on a pro-rata basis.

- (c) Eligibility for Holiday Pay – Except as provided in Section 5 of this Article, to receive holiday pay for a fixed holiday, each of the following conditions must be met during the pay period in which the fixed holiday fell:

- (1) The employee must have been hired prior to or at the start of the pay period and not have separated prior to the end of the pay period in which such fixed holiday fell; and,
- (2) The employee must be paid for at least one-half (1/2) of his/her regularly scheduled hours; and,

- (3) The employee must have been on an approved leave of absence for any unpaid hours; and,
- (4) The employee must have not had any unauthorized leave.
- (d) Holiday During Vacation – When a fixed holiday falls within a vacation period, the holiday time shall not be charged against an employee's earned vacation benefits. As such, the employee shall receive holiday pay for any fixed holiday that falls within a vacation period, provided the employee is eligible for that fixed holiday pay. For example, an employee has approved vacation leave from Tuesday through Thursday and Wednesday is a fixed holiday. Tuesday and Thursday would be coded as vacation leave but Wednesday would be coded as holiday leave.
- (e) Holiday Falling on a Scheduled Day Off - Whenever a fixed holiday falls on an employee's regularly scheduled day off the employee shall accrue, on an hour for hour basis, up to a total of eight (8) hours floating holiday time. At the request of the employee, and with approval of the appointing authority, straight time payment can be made in lieu of accrual provided such compensation is approved during the pay period in which it is worked.
- (f) Working on a Holiday – Whenever an employee is required to work on a fixed holiday the employee shall be compensated at straight time, up to a total of eight (8) hours, at the employee's base rate of pay. Such hours shall not be considered as time actually worked.
- (g) Weekend Holidays – When a fixed holiday falls on a Saturday, the previous Friday will be observed as the fixed holiday except that when the preceding Friday is also a fixed holiday, the preceding Thursday will be observed as the fixed holiday. When a fixed holiday falls on a Sunday, the following Monday will be observed as the fixed holiday except that when the following Monday is also a fixed holiday, the following Tuesday will be observed as the fixed holiday.

For those County department operations which operate six (6) and seven (7) days per week facilities, fixed holidays which fall on either a Saturday or Sunday shall be observed on those days by employees of those operations scheduled to work.

- (h) Holiday Time Accrual
 - (1) Upon retirement or termination, employees shall be compensated for any unused accrued holiday time at the then current base rate equivalency.
 - (2) An employee may code vacation or other appropriate accrued paid leave time on a fixed holiday only under the following circumstances:
 - (i) An employee on an alternate work schedule such as a 9/80 or 4/10 may code accrued vacation hours on a fixed holiday that falls on a workday up to an amount that if combined with his/her fixed holiday accrual would equal the total number of hours the employee would have been scheduled for that day (e.g., an employee on a 4/10 work schedule normally works ten (10) hours on Mondays, when the fixed holiday falls on a Monday the employee codes eight (8) hours of holiday and may code up to two (2) hours of vacation).
 - (ii) An employee in a regular part-time or job share position who does not accrue eight (8) hours of holiday leave due to the employee's reduced work schedule may code accrued vacation leave hours on a fixed holiday that falls on a normal workday up to an amount that if combined with the employee's fixed holiday accrual would equal the total number of hours the employee would have been scheduled for that day (e.g., an employee due to his/her reduced work schedule accrued four (4) hours of holiday, but normally would have worked eight (8) hours on the day in which the holiday occurred, may code four (4) hours of accrued vacation leave in addition to the four (4) hours of holiday).

Section 5 – Leave Accruals While on Disability Leave

Employees on short-term disability, Workers' Compensation, or other disability leaves may choose to fully integrate, partially integrate, or not integrate accrued paid leave time with these disability payments.

The maximum amount the employee receives from integrating leave time with disability payments shall not exceed 100% of the employee's base bi-weekly salary. Accrued paid leave time coded on the employee's time sheet will be limited to the amount of leave necessary to integrate benefits to the level designated by the employee. When the exact amount is not known, a good faith estimate may be made and the amount will be adjusted later as necessary. If any overpayments are made, the employee will be required to repay that amount in accordance with the Payroll Adjustments Article. Employees who knowingly receive payment in excess of their regular base bi-weekly salary are required to report it to their Departmental payroll clerk.

Employees who are fully integrating accrued leave time with disability benefits shall be eligible to receive full accruals of vacation and sick leave. Employees who are not fully integrating accrued leave time with disability benefits shall only earn prorated vacation and sick leave accruals based upon the amount of paid leave time coded on their time sheet.

Employees who are fully integrating paid leave time with disability benefit(s) will be eligible for fixed holiday pay provided that they are on the payroll for the entire pay period and have no unapproved leave for the pay period. Employees who are partially integrating or not integrating paid leave time with disability benefits will be paid for holidays in accordance with the holiday leave provisions in Section 4 of this Article.

Section 6 – Compulsory Leave

If, in the opinion of the appointing authority, employees are unable to perform the duties of their position for physical or psychological reasons, they may be removed from duty without pay, unless the employee is permitted to use appropriate accrued paid leave for which he/she is eligible. In addition, such employees may be required to submit to an examination by either a physician or other competent authority designated by the Director of Human Resources or by their own physician or other practitioner, as appropriate. If the examination report of the competent authority (e.g., physician, appropriate practitioner) shows the employee to be in an unfit condition to perform the duties required of the position, the appointing authority shall have the right to compel such employee to take sufficient leave of absence with or without pay, to transfer to another position without reduction in compensation, and/or follow a prescribed treatment regimen until medically qualified to return to unrestricted duty. An employee who has been removed from duty for physical or psychological reasons by the appointing authority, and the employee was required to submit to an examination, may not return to duty until such time as medical clearance has been obtained.

Additionally, if an employee is otherwise determined to be ineligible to work for any reason (e.g., fails to maintain required licensure/certification), said employee shall be removed from duty without pay, unless the employee is permitted to use appropriate accrued paid leave for which the employee is eligible. Nothing herein is intended to preclude the employer from taking appropriate administrative action with regard to the employee.

Section 7 – Political Leave

Any employee who is a declared candidate for public office (i.e., a candidate who has filed the appropriate documents) shall have the right to a leave of absence without pay for a reasonable period to campaign for the election. Such leave is subject to the conditions governing special leaves of absence without pay contained under section 8 of this Article.

Section 8 – Special Leaves of Absence Without Pay

(a) General Provisions

A special leave of absence without pay for a period not exceeding one (1) year may be granted to an employee who:

- (1) Is medically incapacitated to perform the duties of the position.
- (2) Desires to engage in a relevant course of study, which will enhance the employee's value to the County.
- (3) Takes a leave of absence pursuant to the federal Family Medical Leave Act, the California Family Rights Act, and/or Pregnancy Disability Leave provisions under the Fair Employment and Housing Act (FEHA).
- (4) For any reason considered appropriate by the appointing authority and the Director of Human Resources.

(b) Types of Leaves of Absence

There are four (4) types of leaves of absences. All requests must be in writing and require the approval of the appointing authority and the Director of Human Resources. Upon request, the appointing authority and the Director of Human Resources may grant successive leaves of absence. All benefits shall be administered in accordance with the appropriate Article of this Agreement.

(1) Leaves of Absence With Right to Return

Leaves of absence with right to return may be granted to employees in regular positions for a period not exceeding one (1) year. The employee remains in his/her position.

(2) Family Leave

Leaves of absence will be granted in accordance with the federal Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA) and/or Pregnancy Disability Leave (PDL) provision under Fair Employment and Housing Act (FEHA). This leave can be concurrent with use of paid leave or leave of absence without pay with right to return.

An employee on an approved leave of absence without pay under this provision will continue to receive the health benefits as provided by applicable law. Certification from a health care provider is required for all instances of medical leave under this provision. Employees are required to inform supervisors of the need for leave at least thirty (30) days before commencement where possible.

In instances where the leave is for the birth or placement of a child and both parents are County employees, both employees are limited to a total of twelve (12) weeks between them.

(3) Leaves of Absence Without Right to Return

- (i) Definition – Leaves of absence without right to return may be granted to employees with regular status for a period not exceeding one (1) year. Employees without right to return shall be removed from their position but not separated from County service. As such, the employee's accrued paid leave, if any, shall not be cashed out to the employee. Retirement contributions shall remain in the system and cannot be requested for distribution until the expiration of the leave. The employee shall be eligible to purchase medical benefits pursuant to federal Consolidated Omnibus Reconciliation Act of 1985 (COBRA).
- (ii) Return Process – An employee may return to the same department in the classification from which the employee took the leave of absence with the approval of the appointing authority and the Director of Human Resources. Alternatively, the employee may apply through Human Resources by the last day of the leave of absence. The employee will be placed on the eligible list for the classification from which he/she took the leave of absence without examination.

Placement on the eligible list will be administered in accordance with the requalification provisions of the Personnel Rules. If the employee does not return to a regular position within ninety (90) calendar days of the expiration of such a leave the employee shall be terminated from County service, unless the approval is granted by the Director of Human Resources to extend such leave.

- (iii) Benefits Upon Return – An employee who returns to a regular position within ninety (90) days after the expiration of the leave of absence without right to return shall retain hire date for purposes of leave accruals and step advances.

To retain the above benefits, the employee must return to a position no later than ninety (90) calendar days after the date of expiration of the leave of absence. The ninety (90) days shall run concurrently with the first ninety (90) days of the one (1) year period provided in the Reemployment Article.

(4) Long-Term Medical Leave of Absence

- (i) Definition – An employee with regular status who suffers from a serious condition may be placed on a medical leave of absence for up to one (1) year, only after FMLA, CFRA and/or PDL have been exhausted. However, if an employee meets the service requirements for eligibility for a disability retirement, the Long-Term Medical Leave of Absence shall be extended. The employee is responsible for providing documentation from a qualified health practitioner prior to approval. The County retains the right to request medical documentation regarding the employee's continued incapacity to return to work.

The employee will be removed from his/her position so that the department may fill behind the employee. Retirement contributions shall remain in the system and cannot be requested for distribution until the expiration of the leave. The employee shall be eligible to purchase medical benefits pursuant to the federal Consolidated Omnibus Reconciliation Act of 1985 (COBRA).

Upon the employee's ability to return to work or the expiration of the leave of absence, whichever comes first, the employee will have the right to return to the classification within the department from which he/she took a leave of absence when a funded vacancy for which the employee meets the qualifications is available. If a funded vacancy for which the employee meets the qualifications is unavailable, the Long-Term Medical Leave of Absence may be extended for up to ninety (90) days.

If the employee is unable or unwilling to return to work by the expiration date of the leave, or the soonest date after that for which the department has a vacancy (but in no event later than ninety (90) days following the expiration of the medical leave of absence), the employee relinquishes the right to return.

- (ii) Upon return from a medical leave of absence, the employee shall retain hire date for purposes of leave accruals and step advances.

Section 9 – Jury Duty Leave

Employees in regular positions who are ordered/summoned to serve jury duty including Federal Grand Jury duty shall be entitled to base pay for those hours of absence from work, provided the employee waives fees for service, other than mileage. Such employees will further be required to deliver a "Jury Duty Certification" form at the end of the required jury duty to verify such service. If an employee is required to report to jury duty during hours the employee is not scheduled to work (e.g., it is the employee's normal day off, the employee is off work pursuant to an FMLA, CFRA, or workers' compensation leave, the employee is not in a paid status for the pay period, etc.) the employee is not entitled to Jury Duty Leave for those hours. When practicable, the appointing authority will convert an employee's regular shift to a day shift during the period of jury duty. Employees required to serve on a jury must report to work before and after jury duty provided there is an opportunity for at least one (1) hour of actual work time. The employee will not be required to return to work

if more than one (1) hour remains after the employee has completed jury duty and the employee has received prior approval from the appointing authority or designee to use appropriate leave from the employee's accrued "leave bank." Employees volunteering to serve on a Grand Jury shall be granted a leave of absence without pay to perform the duties of a member of the Grand Jury, in the same manner as provided in Section 7 of this Article.

Section 10 – Examination Time

Employees having regular status in regular positions at the time of application, or employees who do not have regular status but have previously held regular status and continuously remained a County employee, shall be entitled to a reasonable amount of time off with pay for the purpose of attending all examination processes (e.g., selection interviews) required for selection to a different County position. Employees are responsible for notifying and obtaining approval from their immediate supervisor prior to taking such leave. Examination time off shall not be charged against any accumulated leave balances and shall be compensated at the employee's base hourly rate. An employee is not entitled to compensation if the employee is able to complete the examination on his/her own non-working time (e.g., online exams). Employees must report to work before and after examination time provided there is an opportunity for at least one (1) hour of actual work time. The employee will not be required to return to work if more than one (1) hour remains after Examination Time and the employee has received prior approval from the appointing authority or designee to use appropriate leave from the employee's accrued "leave bank."

Section 11 – Blood Donations

Employees in regular positions who donate blood without receiving compensation for such donation, may have up to a total of two (2) hours off with pay to donate blood and to recover, if necessary, from such blood donation with prior approval of the immediate supervisor for each such donation. This benefit shall not be charged to any accumulated leave; provided, however, if the employee is unable to work, any time in excess of two (2) hours for the blood donation and recovery may be charged to accumulated sick leave or be taken as leave without pay. Evidence of each donation must be presented to the appointing authority to receive this benefit.

Employees in regular positions who are apheresis donors may have up to a total of four (4) hours off with pay for the apheresis donation and to recover, if necessary, from such apheresis donation with prior approval of the immediate supervisor for each such donation, provided no compensation is received for such donation.

This benefit shall not be charged to any accumulated leave; provided, however, if the employee is unable to work, any time in excess of four (4) hours for the apheresis donation and recovery may be charged to accumulated sick leave or be taken as leave without pay. Evidence of each apheresis donation must be presented to the appointing authority to receive this benefit.

Section 12 – Time Off for Voting

- (a) If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may, without loss of pay, take off enough working time that, when added to the voting time available outside of working hours, will enable the employee to vote.
- (b) No more than two (2) hours of the time taken off for voting shall be without loss of pay. The time off for voting shall be only at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed.
- (c) If the employee on the third working day prior to the day of election knows or has reason to believe that time off will be necessary to be able to vote on Election Day, the employee shall give the employer at least two (2) working days' notice that time off for voting is desired, in accordance with this section.

EXHIBIT D

MEMORANDUM OF UNDERSTANDING

PROBATION UNIT

2018 – 2022



County of San Bernardino

and

San Bernardino County Probation Officers Association

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- (3) a leave of absence without right to return to work, but placement on an eligible list. Any of these options require the approval of the Director of Human Resources.

Section 4 – Exception to Order of Layoff

Whenever an appointing authority believes that the best interest of the service requires the retention of an employee with special qualifications, characteristics, and fitness for the work, the appointing authority may request that such employee be exempted from the bumping procedures. Such requests must be in writing and approved by the Director of Human Resources. If approved, SBCPOA shall be provided with a copy of the request.

Section 5 – Employee's Rights While on Layoff

- (a) During the first two (2) years following a layoff, laid-off regular employees shall be assured the right of an interview for vacant positions for which they meet certification requirements prior to final selection and appointment to said vacant positions within their previous department in the same or equivalent classification to the one in which the employee has previously held regular status.
- (b) Any employee who is affected by a layoff may request that their name be placed on appropriate eligible lists for a period of two (2) years by submitting such a request and an application to the Director of Human Resources for determination of eligibility. Approval of such requests only entails placement on the list and does not guarantee employment or carry any bumping privileges. Placement on the eligible list shall be made pursuant to the provisions for requalification contained in the Personnel Rules.

LEAVE PROVISIONS

Section 1 – Sick Leave

- (a) Definition – Sick leave with pay is an insurance or protection provided by the County to be granted in circumstances of adversity to promote the health of the individual employee. It is not an earned right to time off from work. Sick leave is defined to mean the authorized absence from duty of an employee because of physical or mental illness, injury, pregnancy, confirmed exposure to a serious contagious disease, attendance upon an ill family member of the employee's or for a medical, optical, dental appointment, for certain purposes related to being a victim of domestic violence, sexual assault, or stalking. It does not include absences for cosmetic surgery.

Family Member, as defined by Labor Code section 245.5, is a parent, child, spouse, registered domestic partner, grandparent, grandchild, or sibling. Child means a biological, foster, or adopted child, a step child, a legal ward, a child of a domestic partner or a child of a person standing in loco parentis. Parent means a biological, foster, or adoptive parent, a stepparent, legal guardian, or a person who stood in loco parentis when the employee was a minor child. Domestic Partner is defined by California Family Code section 297.

- (b) Accumulation – Employees in regular positions shall accrue sick leave for each payroll period completed, prorated on the basis of eighty-eight (88) hours per year, or 3.39 hours per pay period. Earned sick leave shall be available for use the first day following the payroll period in which it is earned. There shall be no limit on sick leave accumulation.

The minimum charge against accumulated sick leave shall be fifteen (15) minutes. Employees in regular positions paid less than eighty (80) hours per pay period or job-shared positions shall receive sick leave accumulation on a pro rata basis.

- (c) Compensation – Approved sick leave with pay shall be compensated at the employee's base rate of pay, except as otherwise provided in this Agreement.

(d) Administration

- (1) Investigation – It shall be the responsibility and duty of each appointing authority to investigate each request for sick leave and to allow sick leave with pay where the application is determined to be proper and fitting, subject to approval of the Director of Human Resources or appointing authority (or their designees).
- (2) Notice of Sickness – In twenty-four (24) hour departments, the appointing authority or designee should be notified at least two (2) hours prior to the start of the employee's scheduled tour of duty of a sickness on the first day of absence and must be notified at least one (1) hour prior to the start of the employee's scheduled tour of duty. In other departments, the appointing authority or designee must be notified within one-half (1/2) hour after the start of the employee's scheduled tour of duty of a sickness on the first day of absence.

It is the responsibility of the employee to keep the appointing authority informed as to continued absence beyond the first day for reasons due to sickness or occupational disability. Failure to make such notification shall result in denial of sick leave with pay. If the employee receives a doctor's off- work order and provides notice of same to the appointing authority, the employee is not required to contact the department daily. If the employee does not have an off-work order or has not notified the appointing authority that one has been issued, the employee shall be required to contact the department daily in accordance with the timeframe above.

- (3) Review/Proof – Generally, a request for a doctor's note should not be requested until an employee has used half of his/her annual sick leave accrual, unless misuse of sick leave is suspected. The Department may review and determine the justification of any request for sick leave with pay and may, in the interest of the County, require a medical report by a doctor to support a claim for sick leave pay.
- (4) Improper Use – Evidence substantiating the use of sick leave for willful injury, gross negligence, intemperance, trivial indispositions, instances of misrepresentation, or violation of the rules defined herein will result in denial of sick leave with pay and shall be construed as grounds for disciplinary action including termination.

(e) Sick Leave for Other than Personal Illness/Injury

- (1) Each employee may use up to one-half (1/2) of the employee's annual accrual of earned sick leave per calendar year to attend to an ill family members of the employee.
- (2) A maximum of forty (40) hours earned sick leave may be used for bereavement due to the death of a family member of the employee's, or any relative who resided with the employee.
- (3) A maximum of forty (40) hours earned sick leave may be used per occurrence for arrival of an adoptive child at the employee's home.
- (4) An employee may utilize on an annual basis no more than forty (40) hours of accumulated sick leave per calendar year for the birth of his/her child.
- (5) While the employee may use sick leave for personal medical, dental or optical appointments, every effort should be made to minimize necessary leave by scheduling the appointments at the start or end of the employee's tour of duty or on a regularly scheduled day off.

(f) Return-to-Work Medical Clearance

- (1) Under the following circumstances, all employees who have been off work due to an illness or injury will report to the San Bernardino County Center for Employee Health and Wellness for a medical evaluation of their condition and authorization to return to work before returning to work:
 - (i) Employees whose treating physician or other qualified medical provider has ordered job modification(s) as a condition for either continuing to work or for returning to work after an illness or injury. This applies to both occupational and non-occupational illness or injury.
 - (ii) Employees who have been off work due to communicable diseases such as, but not limited to, chicken pox and measles.
 - (iii) Employees who have been absent on account of a serious medical condition, when so directed by their appointing authority, and with concurrence of the Center for Employee Health and Wellness.
- (2) The employee is eligible to receive reimbursement for mileage for a return-to-work appointment pursuant to the Expense Reimbursement Article. Employees who attend medical appointments, not return-to-work examinations, at the Center for Employee Health and Wellness for an occupational injury shall receive reimbursement for mileage through workers' compensation. Employees are required to attend the return to work examinations on their own time (see Section 5 below).
- (3) It is the responsibility of the employee, covered by (1) (i) - (iii) above, to obtain written notice from their medical provider of their authorization to return to work with or without job modification. To ensure all necessary and relevant medical information is provided, the County shall make available forms to be completed by the medical provider. It is the responsibility of the employee to provide verbal notice to their appointing authority immediately upon receipt of their medical provider's authorization to return to work, and no later than 24 hours after receipt of the notice. The appointing authority or designee will schedule an appropriate medical evaluation for the employee with the Center for Employee Health and Wellness prior to the employee's return to work. The employee shall provide their medical provider's written notice of authorization to return to work to the Center at or prior to the employee's scheduled appointment time.
- (4) Exceptions to the above requirements may be made on a case-by-case basis by the Medical Director or designee for the Center for Employee Health and Wellness.
- (5) The employee is obligated to attend the appointment as scheduled under the conditions outlined above. If the employee fails to adhere to the procedure, the employee is required to use sick leave or leave without pay for any work hours missed. If the employee has provided two (2) full business days advance notice to their appointing authority or designee of a medical appointment that may result in the employee's release to work, and there is a delay between the employee's appointment with the Center for Employee Health and Wellness and the start of his/her scheduled tour of duty on the day that he/she was released to return to work, the County will pay for work hours missed, without charge to the employee's leave balances.
- (6) The final decision on the employee's ability to return to work rests with the medical provider at the Center for Employee Health and Wellness. In the event the employee is not released to return to work by the medical provider at the Center for Employee Health and Wellness, the employee's status would continue on sick leave or, where there is no balance, leave without pay.
- (g) Workers' Compensation - Employees are covered by Section 4850 of the Labor Code. As such, employees who are injured in the line of duty are entitled to full salary in lieu of Workers' Compensation benefits and sick leave for a period not to exceed one (1) year. After the employee has used one (1) full year of such 4850 time, said employee may use accumulated sick leave with pay with the approval

of the appointing authority to augment temporary disability payments if said employee is still temporarily disabled by order of an accepted physician under the Workers' Compensation sections or until said employee is retired.

- (h) Separation – Unused sick leave shall not be payable upon separation of the employee, except as provided in paragraph (i).
- (i) Sick Leave Cash-Out – Employees who receive a disability retirement due to permanent incapacity to work shall be entitled to one hundred percent (100%) cash payment of any unused sick leave balances, up to one thousand (1,000) hours computed at their then current base hourly rate, if they elect an early retirement in lieu of exhausting such accrued sick leave balances.
- (j) Perfect Attendance – Regular full-time employees, who do not utilize any sick leave, or any leave in lieu of sick leave (e.g., vacation) or benefits in lieu of sick leave (e.g., workers' compensation, short-term disability partial/full integration, etc.) in pay periods 1 through 26 consecutively (or 27, when applicable) , and who do not record any sick leave without pay, Medical Emergency Leave, Military Leave as provided by law, or absent without pay during that calendar year, shall be reimbursed up to a maximum of \$299 for an annual individual (employee only) health club membership or utilization of perfect attendance leave. In lieu of the reimbursement, the employee has the option of utilizing sixteen (16) hours of perfect attendance leave, no cash out provision, from the period of time the perfect attendance leave is granted until the end of the calendar year it was granted. Failure to utilize perfect attendance leave by pay period 26 (or 27 when applicable) of the year in which it was credited to the employee's leave balances or if the employee is appointed to a position in an occupational unit that does not contain a perfect attendance leave provision shall result in forfeiture of any unused leave.
- (k) Vacation Conversion Option – Employees who have used less than forty (40) hours of sick leave in a fiscal year (i.e., pay period 15 through pay period 14 of the following year) may, at the employee's option, convert sick leave to vacation leave by the following formula: Hours of sick leave used are subtracted from forty (40). Sixty percent (60%) of the remainder, or a portion thereof, may be added to vacation leave to be utilized in the same manner as other accrued vacation leave.

<u>Sick Leave Hours Used</u>	<u>Hours to be Converted</u>	<u>Vacation</u>
0	40	24.0
8	32	19.2
16	24	14.4
24	16	9.6
32	8	4.8
40	0	0.0

Section 2 – Vacation Leave

- (a) Definition – Vacation is a right, earned as a condition of employment, to a leave of absence with pay for the recreation and well being of the employee. If an employee has exhausted sick leave, vacation leave may be used for sick leave purposes upon a special request of the employee and with the approval of the appointing authority.
- (b) Accumulation – Employees in regular positions shall accrue, on a pro rata basis, vacation leave for completed service hours, up to eighty (80) hours per pay period. Employees in regular positions paid less than eighty (80) hours per pay period or job-shared positions shall receive vacation leave accumulation on a pro rata basis; provided, however, that there shall be no proration of the maximum accumulations.

Such leave shall be available for use on the first day following the pay period in which it is earned, provided an employee has completed 1,600 hours of continuous service from the employee's hire date.

Length of Service From Hire Date	Annual Vacation Allowance	Maximum Allowed Unused Balance
From Hire Date through 8,320 service hours	80 Hours	160 Hours
Over 8,320 and through 18,720 service hours	120 Hours	240 Hours
Over 18,720 service hours	160 Hours	320 Hours

(c) Administration

- (1) Scheduling - Vacation periods should be taken annually with the approval of the appointing authority at such time as will not impair the work schedule or efficiency of the department but with consideration given to the well being of the employee. No employee shall lose earned vacation leave time because of work urgency. If an employee has reached the maximum allowed unused balance due to work urgency and is unable to take a vacation leave, the appointing authority will notify the Auditor-Controller/Treasurer/Tax Collector's office of the situation and approve one (1) waiver per calendar year of the maximum allowed unused balance for a period not to exceed thirteen (13) pay periods per calendar year.

Written request for vacation leave shall receive a written response from the appointing authority within two (2) weeks of submission. In instances where a vacation leave request has received written, advance approval and is rescinded due to work urgency by the supervisor, that decision may be appealed to the Department Head/Group Administrator for an immediate review. In those instances where the direct supervisor is the Department Head/Group Administrator the rescission due to work urgency may be appealed to the Director of Human Resources for immediate review. In those instances where a financial hardship would occur because pre-approval resulted in prepayment by the employee, a vacation would only be canceled under the most extreme work emergency.

- (2) Minimum Charge – The minimum charge against accumulated vacation leave shall be fifteen (15) minutes. Vacation leave shall be compensated at the employee's base rate of pay, except as otherwise provided in this Agreement.
- (3) Holiday During Vacation – When a fixed holiday falls within a vacation period, the holiday time shall not be charged against an employee's earned vacation benefits.
- (4) Vacation Leave and Termination Date – Employees not planning to return to County employment at the expiration of a vacation leave, except those retiring, shall be compensated in a lump sum payment for accrued vacation at the employee's then base rate of pay and shall not be carried on the payroll. Retiring employees may elect to use vacation leave or to be compensated in a lump sum payment for accrued vacation leave, provided that each pay period the employee charges the number of hours in their regular scheduled tour of duty.

- (5) Vacation Cash-Out – On one (1) occasion during each calendar year until the expiration of the contract, an employee who has utilized eighty (80) or more hours of vacation leave during the previous calendar year may elect to convert into a cash payment, at the employee's base rate of pay in effect at the time of the cash-out, up to eighty (80) hours of accrued vacation leave.

[In order to sell back vacation leave, an employee must make an irrevocable election (i.e., pre-designation) during the month of December, specifying the number of hours to be sold back from the next year's vacation leave accrual. During the calendar year following the pre-designation, no more than three (3) requests may be made to cash out the vacation leave in a single block of not less than eight (8) hours and no more than eighty (80) hours. An employee shall be eligible to cash-out vacation leave hours accrued up to the preceding pay period in which he/she requested the cash-out. For example, an employee who requests a cash-out in pay period 15 can only cash-out the vacation leave accrued through pay period 14. The number of hours requested for cash-out shall not exceed an amount equal to or less than the amount accrued. For example, an employee in December 2015 makes a pre-designation to cash-out 25 hours. The employee accrues 4.61 hours of vacation leave per pay period. At the end of pay period 3 the employee can request to cash-out the 8 hours of vacation leave that she had accrued through pay period 2, but is not yet eligible to cash-out the entire 25 pre-designated hours because the employee has yet to accrue 25 hours of vacation leave. Once an election is made, if the employee does not request that the designated number of hours be sold back by pay period 25, or 26 when applicable, of the calendar year in which the election is effective, the hours will be automatically converted to cash in the last pay period of the calendar year.]

Section 3 – Holiday Leave

(a) Fixed Holidays – All employees in regular positions shall be entitled to the following holidays:

January 1st	November 11th
Third Monday in January	Thanksgiving Day
Third Monday in February	Day after Thanksgiving
Last Monday in May	December 24th
July 4th	December 25th
First Monday in September	December 31st
Second Monday in October	

(b) Floating Holidays – Employees in regular positions shall be entitled to accrue one (1) floating holiday (eight (8) hours holiday time) during the first pay period prior to the third Monday in January, provided that the employee is not on unpaid leave for the entire pay period and is in an active/paid status.

Floating holidays accrued shall be available for use on the first day following the pay period in which they are accrued, with the approval of the appointing authority. Appointing authorities have the right to schedule employees' time off for accrued holidays to meet the needs of the service but with consideration given to the well-being of the employee. Employees in regular positions budgeted less than eighty (80) hours per pay period or job-shared positions shall receive floating holiday accruals on a pro rata basis.

(c) Eligibility for Holiday Pay – Except as provided in Section 4 of this Article, to receive holiday pay for a fixed holiday, the following conditions must be met during the pay period in which the fixed holiday fell.

- (1) The employee must have been hired prior to or at the start of the pay period and not have separated prior to the end of the pay period in which such fixed holiday fell.
- (2) The employee must be paid for at least one-half (1/2) of their regularly scheduled hours.
- (3) The employee must have been on an approved leave of absence for any unpaid hours.
- (4) The employee must have not had any unauthorized leave.

- (d) Holiday During Vacation or Other Period of Paid Leaves – When a fixed holiday falls within a vacation period, or other period of paid leave, the holiday time shall not be charged against an employee's earned vacation benefits or other paid leave. In no instance shall an employee be permitted to use vacation, sick or other paid leave on a fixed holiday that the employee is not scheduled to work in order to accrue the holiday leave.

As such, the employee shall receive holiday pay for any fixed holiday that falls within a vacation period, provided the employee is eligible for that fixed holiday pay. For example, an employee has approved vacation leave from Tuesday through Thursday and Wednesday is a fixed holiday. Tuesday and Thursday would be coded as vacation leave but Wednesday would be coded as holiday leave.

- (e) Working on a Holiday – Whenever an employee is required to work on a fixed holiday or the fixed holiday falls on an employee's regularly scheduled day off, the employee shall accrue, on an hour for hour basis, up to a total of eight (8) hours floating holiday time. At the request of the employee, and with approval of the appointing authority, straight time payment can be made in lieu of accrual provided such compensation is approved during the pay period in which it is worked.
- (f) Weekend Holidays – When a fixed holiday falls on a Saturday, the previous Friday will be observed as the fixed holiday except that when the preceding Friday is also a fixed holiday, the preceding Thursday will be observed as the fixed holiday. When a fixed holiday falls on a Sunday, the following Monday will be observed as the fixed holiday except that when the following Monday is also a fixed holiday, the following Tuesday will be observed as the fixed holiday.

For those County department operations that operate six (6) and seven (7) days per week facilities, fixed holidays which fall on either a Saturday or Sunday shall be observed on those days by employees of those operations scheduled to work.

(g) Holiday Time Accrual

- (1) Upon retirement or termination, employees shall be compensated for any unused accrued holiday time at the then current base rate equivalency unless the employee's position was abolished as a result of a layoff.
- (2) An employee may code vacation or other appropriate accrued paid leave time on a fixed holiday only under the following circumstances:
 - (i) An employee on an alternate work schedule such as a 9/80 or 4/10 may code accrued vacation hours on a fixed holiday that falls on a workday up to an amount that if combined with his/her fixed holiday accrual would equal the total number of hours the employee would have been scheduled for that day (e.g., an employee on a 4/10 work schedule normally works ten (10) hours on Mondays, when the fixed holiday falls on a Monday the employee codes eight (8) hours of holiday and may code up to two (2) hours of vacation).
 - (ii) An employee in a regular part-time or job share position who does not accrue eight (8) hours of holiday leave due to the employee's reduced work schedule may code accrued vacation leave hours on a fixed holiday that falls on a normal workday up to an amount that if combined with the employee's fixed holiday accrual would equal the total number of hours the employee would have been scheduled for that day (e.g., an employee due to his/her reduced work schedule accrued four (4) hours of holiday, but normally would have worked eight (8) hours on the day in which the holiday occurred, may code four (4) hours of accrued vacation leave in addition to the four (4) hours of holiday).

Section 4 – Leave Accruals While on Disability Leave

Employees receiving the benefits of workers' compensation, short-term disability, or state disability insurance leave receive partial replacement of their income through these benefits. Employees on these types of disability leaves may choose to fully integrate, partially integrate, or not integrate personal leave time with these disability payments.

The maximum amount the employee receives from integrating leave time with disability payments shall not exceed 100% of the employee's base salary. Paid personal leave time coded on the employee's Time and Labor Report will be limited to the amount of leave necessary to integrate benefits to the level designated by the employee. When the exact amount is not known, a good faith estimate may be made and the amount will be adjusted later as necessary. If any overpayments are made, the employee will be required to repay that amount in accordance with the Payroll Adjustments Article. An employee who knowingly receives payment in excess of their regular base salary is required to report it to their departmental Payroll Specialist.

Employees who are fully integrating accrued leave time with disability benefits shall be eligible to receive full accruals of vacation and sick leave. Employees who are not fully integrating shall earn pro-rated vacation and sick leave accruals based upon paid leave time coded on the Time and Labor Report only.

Employees who are fully integrating paid leave time with disability benefit(s) will be eligible for fixed holiday pay provided that they are on the payroll for the entire pay period and have no unapproved leave for the pay period. Employees who are partially integrating or not integrating paid leave time with disability benefits will be paid for holidays in accordance with the holiday leave provisions in Section 3 of this Article.

Section 5 – Compulsory Leave

If, in the opinion of the appointing authority, employees are unable to perform the duties of their position for physical or psychological reasons, an examination may be required by a physician or other competent authority designated by the Director of Human Resources or designee. If the examination report shows the employee to be in an unfit condition to perform the duties required of the position, the appointing authority shall have the right to compel such employee to take sufficient leave of absence with or without pay, to transfer to another position without reduction in compensation, and/or follow a prescribed treatment regimen until medically qualified to return to unrestricted duty.

If an employee fails to maintain the minimum qualifications or other job prerequisite for his or her classification or assignment, the appointing authority shall compel the employee either (1) to take a leave of absence without pay or the employee may be permitted to use appropriate accrued paid leave for which he or she is eligible; or (2) to transfer the employee to another assignment without reduction in pay; provided that nothing herein shall inhibit the ability of the appointing authority to impose appropriate discipline.

Section 6 – Military Leave

As provided in the California Military and Veterans Code Section 395 et. seq., and any amendment thereto, and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, a County employee, regular, extra-help, or recurrent may be entitled to the following rights concerning military leave:

- (a) Definition – Military leave is defined as the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training (weekend drills), full-time National Guard duty, and a period for which an employee is absent for the purpose of an examination to determine the fitness of the person to perform any such duty.

- (b) Notice and Orders – All employees shall provide advance notice of military service unless military necessity prevents the giving of notice or the giving of notice is impossible or unreasonable. Where available, copy of military orders must accompany the request for leave.
- (c) Temporary Active Duty – Any employee who is a member of the reserve corps of the Armed Forces, National Guard, or Naval Militia shall be entitled to temporary military leave of absence for the purpose of active military training provided that the period of ordered duty does not exceed one hundred eighty (180) calendar days, including time involved in going to and returning from such duty. While on paid status, an employee on temporary military leave shall receive the same vacation, holiday, and sick leave, step advances and benefits that would have been enjoyed had the employee not been absent, providing such employee has been employed by the County for at least one (1) year immediately prior to the date such leave begins. In determining the one (1) year employment requirement, all time spent in recognized military service, active or temporary, shall be counted. An exception to the above is that an uncompleted probationary period must be completed upon return to the job. Any employee meeting the above one (1) year employment requirement shall be entitled to receive their regular salary or compensation, pursuant to Section (e) of this Article. Any employee meeting the requirements of (c) and (d) shall be entitled to receive his/her regular salary or compensation for the first thirty (30) calendar days of any such leave. Pay for such purposes shall not exceed thirty (30) days in one fiscal year and shall be paid only for the employee's regularly scheduled workdays that fall within the thirty (30) calendar days.
- (d) Full-Time Active Duty – Employees who resign from their positions to serve in the Armed Forces for more than one hundred eighty (180) days, shall have a right to return to their former classification upon serving written notice to the appointing authority, no later than ninety (90) days after completion of such service. Returning employees are subject to a physical/psychological examination.

Should such employee's former classification have been abolished, then the employee shall be entitled to a classification of comparable functions, duties, and compensation if such classification exists, or to a comparable vacant position for which the employee is qualified.

The right to return to former classification shall include the right to be restored to such civil service status as the employee would have if the employee had not so resigned; and no other person shall acquire civil service status in the same position so as to deprive such employee of this right to restoration.

Eligible employees are also entitled to the reemployment and benefit rights as further described in the Uniformed Services and Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301-4333. Specifically, a returning employee will receive restoration of original hire date, salary step, vacation accrual rate, sick leave balance (unless the employee has received payment for unused sick leave in accordance with provisions contained herein), the retirement plan contribution rate and retirement system contributions (provided the employee complies with any requirements established by the Retirement Board). However, such employee will not have accrued vacation, sick leave, or other benefit while absent from County employment, except as provided in the temporary duty provision.

- (e) Compensation – This provision does not include an employee's attendance at weekend reserve meetings or drills. Employees must use their own time to attend such meetings. Should the meetings unavoidably conflict with an employee's regular working hours, the employee is required to use vacation or holiday leave, leave without pay, or make up the time. Employees who are called in for a medical examination to determine physical fitness for military duty must also use vacation leave, leave without pay, or make up the time. Employees cannot be required to use their accrued leave. Any employee meeting the requirements in (c) and (d) shall be entitled to receive their regular salary or compensation for the first thirty (30) calendar days of any such leave. Pay for such purposes shall not exceed thirty (30) days in any one fiscal year and shall be paid only for the employee's regularly scheduled workdays that fall within the thirty (30) calendar days.

- (f) Extension of Benefits – The County recognizes the increased requirements of the military due to the current threats facing the United States of America and, as such, has established a program under which employees may be eligible for an extension of benefits. Employees who are involuntarily called to active duty as a result of the activation of military reservists due to a crisis related to terrorist attacks on America, and are eligible to receive the thirty (30) calendar day military leave compensation shall receive the difference between their base County salary and their military salary starting on the 31st calendar day of military leave. The difference in salary shall continue through June 26, 2015 and for any additional period as maybe approved by the Board of Supervisors. During this period, the County will continue to provide the employee all the benefits and leave accruals as was provided prior to such active duty. Retirement system contributions and service credit will be granted if the employee had enough pay to cover the entire retirement system contribution. If the employee does not get enough pay to cover the retirement system contribution, no contribution or service credit will be given. Employees should note that the Accidental Death and Dismemberment (AD&D) plan contains a war exclusion.

If the employee becomes eligible for full County payment for the first 30 days of military leave provided in (e) of this Section, the extended payments provided under this section shall be suspended and shall be continued after the 30 days compensation has been completed.

- (g) Vacation and Military Leave – Employees shall not be permitted to take vacation or other accrued leave in lieu of the military leave provisions provided in (e) of this Section. Employees may elect to use accrued leave time, except sick leave, in lieu of the integrated pay in subsection (f) of this Section under the following conditions:
- (1) The employee must decline in writing the benefits of section (f) of this Article prior to the due date of the Time and Labor Report. The employee must include the dates for which he/she is declining the benefit.
 - (2) The employee must use accrued leave time for the entire pay period (i.e., County pay will not be integrated with military pay for partial pay periods).
 - (3) Such written declination cannot be revoked or amended at a later date for a pay period for which the TLR has already been submitted.
 - (4) Benefits, leave accruals, and pay will be administered per normal procedures for vacation pay; no additional benefits otherwise granted under this Article will be available.

Employees may elect to use accrued leave time, except sick leave, once all paid benefits have been exhausted.

Section 7 – Political Leave

Any employee who is a declared candidate for public office (i.e., a candidate who has filed the appropriate documents) shall have the right to a leave of absence without pay for a reasonable period to campaign for the election. Such leave is subject to the conditions governing special leaves of absence without pay under Section 8 of this Article.

Section 8 – Special Leaves of Absence Without Pay

- (a) General Provisions – A special leave of absence without pay for a period not exceeding one (1) year, unless specified otherwise, may be granted to an employee who:
- (1) Is medically incapacitated to perform the duties of the position.
 - (2) Desires to engage in a relevant course of study, which will enhance the employee's value to the County.

- (3) Takes a leave of absence pursuant to the federal Family Medical Leave Act, the California Family Rights Act, and/or Pregnancy Disability Leave provisions under the Fair Employment and Housing Act (FEHA).
- (4) For any reason considered appropriate by the appointing authority and the Director of Human Resources.

(b) Types of Leaves of Absence

There are four (4) types of leaves of absences. All requests must be in writing and require the approval of the appointing authority or designee and the Director of Human Resources or designee. Upon request, the appointing authority or designee and the Director of Human Resources or designee may grant successive leaves of absence. An employee shall be cashed out at the rate of pay in effect at the time the employee last received pay (i.e., actually worked or received paid leave). All benefits shall be administered in accordance with the appropriate Article of this Agreement.

(1) Leaves of Absence With Right to Return

Leaves of absence with right to return may be granted to employees in regular positions for a period not exceeding one (1) year. The employee remains in his/her position.

(2) Family Leave

Leaves of absence will be granted in accordance with the federal Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA) and/or Pregnancy Disability Leave (PDL) provision under Fair Employment and Housing Act (FEHA). This leave can be concurrent with use of paid leave or leave of absence without pay with right to return.

An employee on an approved leave of absence without pay under this provision will continue to receive the benefits specified in the Medical and Dental Coverage Article of this Agreement. Certification from a health care provider is required for all instances of medical leave under this provision. Employees are required to inform supervisors of the need for leave at least thirty (30) days before commencement where possible.

In instances where the leave is for the birth or placement of a child and both parents are County employees, both employees are limited to a total of twelve (12) weeks between them.

(3) Leaves of Absence Without Right to Return

- (i) General – Leaves of absence without right to return may be granted to employees with regular status for a period not exceeding one (1) year. Employees without right to return shall be removed from their position. Retirement contributions shall remain in the system and cannot be requested for distribution until the expiration of the leave. The employee shall be eligible to purchase benefits pursuant to federal Consolidated Omnibus Reconciliation Act of 1985 (COBRA).
- (ii) Return Process – An employee may return in the same department in the classification from which the employee took the leave of absence with the approval of the appointing authority and the Director of Human Resources. Alternatively, the employee must apply through Human Resources by the last day of the leave of absence. The employee will be placed on the eligible list for the classification from which he/she took the leave of absence without examination. Placement on the eligible list will be administered in accordance with the requalification provisions of the Personnel Rules. If the employee does not return to a regular position within ninety (90) calendar days of the expiration of such a leave the employee shall be terminated from County service. If reemployed, the employee shall be

required to serve a new probationary period. The Director of Human Resources or designee has the discretion to waive the requirement to serve a new probationary period.

- (iii) Benefits Upon Return – An employee who returns to a regular position within ninety (90) days after the expiration of the leave of absence without right to return shall retain the following benefits:

- Hire date; and
- Hire date for purposes of leave accruals and step advances; except that the employee will not receive service credit for the period of time the employee is on leave of absence without right to return.

To be reemployed and retain the above benefits, the employee must be appointed to a position no later than 90 calendar days after the date of expiration of leave of absence. The 90 days shall run concurrently with the first 90 days of the one (1) year period provided in the Reemployment Article.

(4) Long-Term Medical Leave of Absence

An employee who takes a Medical Leave of Absence while on Medical Emergency Leave (MEL) may retain up to 160 hours of MEL donations to be administered in accordance with payroll procedures established by the County Auditor-Controller/Treasurer/Tax Collector. Donated time in excess of 160 hours shall be returned to the donor(s) in the same manner in which it was donated, i.e., the donated time will be converted back to vacation, holiday, administrative leave or annual leave. The excess donated time will be returned to the donor(s) based on each donor's percentage of total time donated to the recipient.

- (i) An employee with regular status who suffers from a serious health condition may be placed on a medical leave of absence for up to one (1) year only after FMLA, CFRA and/or PDL have been exhausted. However, if an employee meets the service requirement for eligibility for a disability retirement, the Long-Term medical Leave of Absence may be extended. The employee is responsible for providing documentation from a qualified health practitioner prior to approval. The County retains the right to request medical documentation regarding the employee's continued incapacity to return to work.
- (ii) The employee will be removed from his/her position so that the department may fill behind the employee. Retirement contributions shall remain in the system and cannot be requested for distribution until the expiration of the leave. The employee shall be eligible to purchase benefits pursuant to the federal Consolidated Omnibus Reconciliation Act of 1985 (COBRA).
- (iii) Upon the employee's ability to return to work or the expiration of the leave of absence, whichever comes first, the employee will have the right to return to the classification within the department from which he/she took a leave of absence when a funded vacancy for which the employee meets the qualifications is available. If the employee does not return to work by the expiration date of the leave, or the soonest date after that for which the department has a vacancy (but in no event later than ninety (90) days following the expiration of the medical leave of absence), but in no event later than ninety (90) days following the expiration of the Medical Leave of Absence, the employee relinquishes the right to return.
- (iv) Upon return from a medical leave of absence, the employee shall retain the benefits described under Section 8(b)3(iii) of this Article.

Section 9 – Jury Duty Leave

Employees in regular positions who are ordered/summoned to serve jury duty including Federal Grand Jury duty shall be entitled to base pay for those hours of absence from work, provided the employee waives fees for service, other than mileage. Such employees will further be required to deliver a “Jury Duty Certification” form at the end of the required jury duty to verify such service. If an employee is required to report to jury duty during hours the employee is not scheduled to work (e.g. it is the employee’s normal day off, the employee is off work pursuant to FMLA, CFRA, or workers’ compensation leave, the employee is not in a paid status for the pay period, etc.) the employee is not entitled to Jury Duty leave for those hours. When practicable, the appointing authority will convert an employee’s regular tour of duty to a day shift tour of duty during the period of jury duty. Employees required to serve on a jury must report to work before and after jury duty provided there is an opportunity for at least one (1) hour of actual work time. The employee will not be required to return to work if more than one (1) hour remains after the employee has completed jury duty and the employee has received prior approval from the appointing authority or designee to use appropriate leave from the employee’s accrued leave bank. Further, an employee shall be required to report to work on any day during the period of jury service that they are not required to report to jury duty. For example, if an employee is scheduled to work Friday but is not required to report to jury duty, the employee shall be required to report to work. Employees volunteering to serve on a Grand Jury shall be granted a leave of absence without pay to perform the duties of a member of the Grand Jury, in the same manner as provided in Section 8 of this Article.

Section 10 – Examination/Interview Time

Employees having regular status in regular positions at the time of application shall be entitled to a reasonable amount of time off with pay for the purpose of attending examinations and selection interviews for promotions to higher level County positions. Examination time shall also be used for such an employee’s attendance at all other promotion-related requirements, i.e., medical evaluation, background processing, etc. Employees are responsible for notifying and obtaining approval from their immediate supervisor prior to taking such leave. Examination time off shall not be charged against any accumulated leave balances and shall be compensated at the employee’s base hourly rate. An employee is not entitled to compensation if the employee is able to complete the examination on his/her own non-working time (e.g., online exams). Employees having probationary status, including those who have previously held regular status in another classification, are not entitled to examination time off with pay. Employees must report to work before and after examination time provided there is an opportunity for at least one (1) hour of actual work time. The employee will not be required to return to work if more than one (1) hour remains after Examination Time and the employee has received prior approval from the appointing authority or designee to use appropriate leave from the employee’s accrued “leave bank.”

Section 11 – Witness Leave

Employees in regular positions shall be entitled to a leave of absence from work when subpoenaed to testify as a witness, such subpoena being properly issued by a court, agency, or commission legally empowered to subpoena witnesses. This benefit shall not apply in any case in which the subpoenaed employee is a party to the action or the subpoena has arisen outside of the employee’s scope of employment. Witness leave shall not be charged against any accumulated leave balances and shall be compensated at the employee’s base hourly rate. This benefit will be paid only if the employee has demanded witness fees at the time of service of the subpoena, and such fees are turned over to the County. If an employee is required to testify as a witness during hours the employee is not scheduled to work (e.g. it is the employee’s normal day off, the employee is off work pursuant to FMLA, CFRA, or workers’ compensation leave, the employee is not in a paid status for the pay period, etc.) the employee is not entitled to Witness Leave during those hours.